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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,099	07/30/2003	Ricardo Martinez Perez	CE11323J1211	8305

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FLEIT, KAIN, GIBBONS, GUTMAN, BONGINI & BIANCO P.L. 551 N.W. 77TH STREET, SUITE 111 BOCA RATON, FL 33487		

EXAMINER	
WAI, ERIC CHARLES	

ART UNIT	PAPER NUMBER
2195	

NOTIFICATION DATE	DELIVERY MODE
10/02/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptoboca@focusonip.com

Office Action Summary

Application No.

10/630,099

Applicant(s)

MARTINEZ PEREZ ET AL.

Examiner

Eric C. Wai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,8-13,16-18,20,21 and 24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,8-13,16-18,20,21 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-5, 8-13, 16-18, 20-21, and 24 are presented for examination.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 9-13, and 16 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to a signal directly or indirectly by claiming a medium and the Specification recites evidence where the computer readable storage medium is defined as a "transitory state medium" (such as a carrier wave). In that event, the claims are directed to a form of energy which at present the office feels does not fall into a category of invention. The following link on the World Wide Web is for the United States Patent And Trademark Office (USPTO) policy on 35 U.S.C. §101.

<http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101_20051026.pdf>

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4, 9-12, 17-18, 20, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Pham et al. (US Pat No. 4,750,116 hereinafter Pham).

6. Regarding claim 1, Pham teaches a method on an electronic device (col 1 line 6) for managing application resources on the electronic device (col 1 lines 12-14), the method comprising:

receiving a command indicating to execute an application on an electronic device (col 1 lines 14-16);

reading at least one application resource requirement associated with the application (col 1 lines 67-68); and

determining whether the at least one application resource requirement can be met by the electronic device (col 1 lines 67 to col 2 line 1, wherein means must be provided to determine which resources are currently available), wherein the at least one application resource requirement includes at least one of: average MIPS; lowest MIPS; peak MIPS; screen refresh rate; I/O bandwidth; and priority level (col 1 line 21, "priority level").

7. Regarding claim 2, Pham teaches that the electronic device is any one of a mobile telephone, a mobile pager, a wireless messaging device, a computer, a personal

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digital assistant, and a mobile communication system (abstract, wherein the system is a computer).

8. Regarding claim 3, Pham teaches that the electronic device is a portable device (abstract, wherein it is inherent that the system can be implemented on a portable computer).

9. Regarding claim 4, Pham teaches the steps of:

wherein if the at least one application resource requirement can be met by the electronic device, executing the application on the electronic device (col 1 lines 25-27); and

wherein if the at least one application resource requirement cannot be met by the electronic device, indicating to the user that the application cannot be executed on the electronic device (col 2 lines 1-3).

10. Regarding claims 9-12, 17-18, 20, and 24, they are the computer readable medium and electronic device claims of claims 1-4 above. Therefore, they are rejected for the same reasons as claims 1-4 above.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 5, 8, 13, 16, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pham et al. (US Pat No. 4,750,116) in view of Rawson et al (US Pat No. 5,682,204 hereinafter Rawson).

13. Rawson was disclosed on IDS dated 11/21/2003.

14. Regarding claims 5 and 6, Pham does not teach the steps of: increasing or decreasing at least one of the clock rate and the level of power consumption of the CPU of the electronic device and executing the application on the electronic device.

15. Rawson teaches a method for power management wherein the execution of an application takes into consideration a power state required by the application (col 2 lines 47-54).

16. It would have been obvious to one of ordinary skill in the art at the time of the invention, to include increasing or decrease the clock rate or level of power consumption of the CPU during execution. One would be motivated by the desire to extend the useful operating time of a battery-operated computer (col 1 lines 18-20) as indicated by Rawson.

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17. Regarding claim 8, Pham and Rawson do not teach indicating to the user that at least one of the clock rate and the level of power consumption of the CPU of the electronic device must be increased in order to execute the application on the electronic device.

18. However, it would have been obvious to one of ordinary skill in the art to notify a user of a change in the level of power consumption. One would be motivated by the desire to alert a user of the possibility of decreased usage of the portable device.

19. Regarding claims 13, 16 and 21, they are the computer readable medium and electronic device claims of claims 5 and 8 above. Therefore, they are rejected for the same reasons as claims 5 and 8 above.

Response to Arguments

20. Applicant's arguments filed 7/23/2007 have been fully considered but they are not persuasive.

21. Applicant argues that:

- a. In Pham, there is no discussion of whether a software application (once it has "stolen" hardware resources can run on the electronic device. On the other hand, the invention claimed in the present application concerns changing a hardware function ... to match the needs of a certain single software application.

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b. However, Rawson teaches against increasing the clock rate or level of power consumption of the processor during execution. If Rawson teaches anything in this regard, Rawson teaches decreasing the clock rate or level of power consumption of the processor.

22. Regarding a). Applicant's claim language does not preclude the possibility of more than one application sharing the same hardware resources. Furthermore, Pham is very clear that a software application with "stolen" hardware resources continues running when those resources are returned (col 2 lines 4-7).

23. Regarding b). Contrary to Applicant's assertion, Rawson does teach increasing the clock rate or level of power consumption of the processor during execution (Claim 1 and col 2 lines 1-8).

Conclusion

24. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric C. Wai whose telephone number is 571-270-1012. The examiner can normally be reached on Mon-Thurs, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng - Ai An can be reached on 571-272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EW


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